

**DIRECT SELLING/MULTI-LEVEL ORGANIZATIONS
TAX COLLECTION AGREEMENT
(Agreement #2 No B&O Tax Collection)**

I. Recitals

This agreement is made between _____, Inc. (_____), of _____, _____ and the State of Washington, Department of Revenue, (the “**Department**”) charged with the responsibility to collect sales, use, Regional Transit Authority (RTA) tax, litter tax, Business and Occupation (B&O) tax on gross receipts and various other taxes. These taxes are collectively referred to as the “Taxes”.

_____ is a wholesaler of consumer products (the “**products**”). _____ sells and distributes the products to independent business owners (the “**distributors**”). The products are sold to distributors on a sale for resale basis and shipped to distributors by common carrier.

For the limited purposes of this agreement only, distributors are considered independent businesses and not agents, employees or joint ventures of _____, but such designation shall not be binding upon any other agency of the State of Washington, nor necessarily determinative of the relationship between _____ and its distributors with respect to establishing qualification for benefits or obligations for any other purpose. Distributors sell the products to other distributors or end users (the “**customers**”) and are entitled to the difference between the price paid to _____ for the products (the “**wholesale price**”) and the price at which the products are sold to the customers (the “**retail price**”). The distributors independently establish their retail price.

Each distributor selling within the State of Washington is responsible for collecting and remitting to the Department the appropriate Taxes on all sales. The Department recognizes that the administration, supervision, and audits of distributors represent an expensive and time-consuming endeavor and actively seek methods to ease its burdens. _____ is interested in easing the administrative burdens placed on distributors.

Now therefore, in order to simplify and make more efficient the administration and collection procedures for the Taxes imposed by the State of Washington and to reduce the individual licensing of distributors for taxing purpose, the parties agree as follows:

II. Collection of Taxes by _____ on Behalf of Distributors Selling Products of _____

A. Sales, Use, and RTA Taxes

1. **Collection Obligation.** _____ shall assume responsibility for the collection and remittance of the sales, use and RTA taxes as they apply on the sale of its products within the scope of this agreement. A sale is presumed to have occurred within the State of Washington if the product is shipped by _____ to a destination (based on postal address) within the State of Washington.
2. **Calculation of Tax Due.** For efficient administration, _____ shall collect and remit the sales, use, and RTA taxes as they apply based on the suggested retail price of the products, including shipping charges (the “**suggested retail price**”), as established from time to time by _____ or actual selling price if known. Notwithstanding the foregoing, the amount due under this Agreement shall be adjusted as discussed below.
3. **Adjustments to Tax.** The parties recognize that distributors may resell the products at a price other than the suggested retail price or in a transaction that is not subject to sales, use and RTA taxes. To ensure that the sales, use and RTA taxes initially collected and remitted to the Department by _____ represent, as close as commercially practicably under the circumstances, the amount due on the sale of the products, the sales, use and RTA taxes to be paid by _____ under this Agreement shall be adjusted as follows:
 - a) _____ shall document and increase the sales, use, and RTA taxes remitted to the Department under this Agreement if:
 - (1) _____ is notified by a distributor, or otherwise knows, or should have known that a distributor is selling or has sold product at a price in excess of the suggested retail price; and/or
 - (2) A distributor remits the additional sales, use and RTA taxes due.

The additional sales, use, and RTA taxes due under this subsection shall equal the difference between the suggested retail price of the products sold and the actual retail price of the same products multiplied by the applicable tax rate. For purposes of subsection a), the suggested retail price shall be determined at the time the Tax for the sold products was collected by _____.

If _____ is notified, knows, or should have known of the selling of product at a price in excess of the suggested retail price by a distributor that fails to remit the additional tax due, _____ shall, no later than the end of the reporting period following the month in which _____ shall have obtained such knowledge, notify the Department, in writing, of the identity of any distributor selling of product at a price in excess of the suggested retail price, and the material facts relating to such sale(s).

b) _____ shall document and reduce the sales, use, and RTA remitted to the Department under this Agreement, if a distributor notifies _____ that:

- (1) A distributor sells the products at retail for a price less than the suggested retail price;
- (2) A distributor sells and delivers the products to a customer outside the State of Washington;
- (3) A distributor uses or consumes the products in the distributor's business activities or otherwise;
- (4) A distributor sells the products to a tax-exempt customer;
- (5) A distributor or customer returns the products, for whatever reason, to _____ for a refund; or
- (6) _____ erroneously collected sales, use and RTA taxes from the distributor for the purchase of the products.

The tax reductions under subsections (2), (4) and (5) shall equal the sales, use and RTA taxes previously collected and remitted by _____ on the sold products. The tax reduction under subsection (1) shall equal the difference between the suggested retail price of the products and the actual sales price for the same products multiplied by the applicable tax rate. The tax reduction under subsection (3) shall equal the difference between the suggested retail price of the sold products and the wholesale price for the same products multiplied by the applicable tax rate. The tax reduction under subsection (6) shall equal the amount of the sales, use and RTA taxes erroneously collected by _____. For purposes of subsection (b), the suggested retail price shall be determined at the time the sales, use and RTA taxes for the sold products were collected by _____.

B. Gross Receipts Tax: Business and Occupation Tax (B&O tax)

1. **Collection Obligation.** Under this agreement, _____ is not responsible for reporting and remitting B&O tax on behalf of its distributors. Nothing under this agreement relieves the distributors from their obligation to pay the B&O tax. In the event a distributor remits any B&O tax liability to _____, _____ agrees to report and remit the B&O tax that _____ receives from its distributors.

C. Litter Taxes:

1. **Collection Obligation.** _____ shall assume responsibility for the collection and remittance of litter tax on behalf of its distributors as it applies on the sale of its products under Washington Administrative Code 458-20-243 within the scope of this agreement. A sale is presumed to have occurred within the State of Washington if the product is shipped by _____ to a destination (based on postal address) within the State of Washington.
2. **Calculation of Tax Due.** For efficient administration, _____ shall collect and remit the litter tax as it applies based on the suggested retail price of the products, including shipping charges (the “**suggested retail price**”), as established from time to time by _____ or actual selling price if known. Notwithstanding the foregoing, the amount due under this Agreement shall be adjusted as discussed under section II. A. 3. a) (1), (2), & b) (1), (2), (3), (5), (6) of this agreement.

III. Obligation to Inform, Annual Listing and Threshold Amounts

A. Obligation to Inform: _____ will provide its Washington distributors with information regarding this Tax Reporting Agreement and/or information regarding the Department’s registration and filing requirements including but not limited to the information contained in section III. A. 1 & 2 of this agreement. _____ must obtain resale certificates (or in the case of commissioned distributors, a tax registration number) from distributors who report their Washington taxes on their own.

1. A distributor’s gross sales income is taxable under the retailing B&O tax classification (the current tax rate is .00471). Commission income is taxable under the service and other activities B&O tax classification (the current tax rate is .015). The B&O tax under each classification must be added together to determine if the total exceeds the Small Business B&O Tax Credit. Nothing under this agreement relieves the distributors from B&O tax if it exceeds the Small Business B&O Tax Credit. The Small Business B&O Tax Credit is not a deduction. Such that if a distributor’s B&O tax liability exceeds the Small Business Tax Credit, that distributor owes the total amount

of the B&O tax for that year without subtracting the amount of the Small Business B&O Tax Credit.

2. A distributor will be required to register with the Department and report their own Taxes if their gross income exceeds the Annual Sales Threshold and/or the Annual Commission Threshold as (as defined below). _____ shall inform the distributors that if they exceed the Annual Sales Threshold and/or the Annual Commission Threshold they must register with the Department and pay B&O tax to the Department based on all of their business income for the same calendar year. Also, those distributors that both earn commissions and make sales may owe B&O tax to the Department even if they do not exceed either the Annual Sales Threshold or the Annual Commission Threshold. Whether a distributor owes B&O tax in any calendar year is dependent on whether their gross income from all business activities results in a B&O tax obligation exceeding the Small Business B&O Tax Credit (currently \$420 annually). If so, such distributors must register with the Department and report their Taxes.

B. Obligation to file Annual Listing: At the end of each calendar year, _____ will provide the Department with a list of distributors whose annual gross sales have exceeded the Annual Sales Threshold and or whose annual commission income has exceeded the Annual Commission Threshold. Commissions are defined as the total of all monetary and non-monetary compensation paid to distributors based on their performance or the performance of other distributors. The term “commissions” includes amounts characterized as commissions, bonuses, awards and similar payments. Such disclosure is to be made by January 31st of the year following the calendar year in which the distributor made the applicable gross sales or earned the qualifying commissions. The listing is to contain the name and address of the distributors and the annual sales and/or commission income of those distributors. If there are no distributors that have exceeded the thresholds, a letter shall be sent in place of the listing indicating such. The listing is to be mailed to Taxpayer Account Administration PO Box 47476, Olympia WA 98504-7476. _____ shall also inform each distributor that exceeds the Annual Sales Threshold and or Annual Commission Threshold that they are obligated to register with the Department and report their own B&O tax for the calendar year in which they exceeded the threshold. In addition, such distributors must independently report their own Taxes for the next calendar year and each succeeding calendar year.

C. Annual Sales & Commission Threshold

1. **Computation of Annual Sales Threshold:** The Annual Sales Threshold is equivalent to the maximum Small Business Tax Credit for the retailing B&O tax classification. At the time of this agreement, the maximum small business B&O tax credit under RCW 82.04.4451 is \$420 per year. The current tax rate for retailing B&O tax is .00471. Accordingly, the Annual Sales Threshold is

\$89,172 (\$420/.00471). If the maximum credit and/or retailing B&O tax rate change(s) in the future, the Annual Sales Threshold for purposes of this agreement is to be adjusted accordingly.

- 2. Computation of Annual Commission Threshold:** The annual commission threshold is equal to the maximum small business B&O tax credit for the service and other activities B&O tax classification. At the time of this agreement, the maximum small business B&O tax credit under RCW 82.04.4451 is \$420 per year. The current tax rate for service B&O tax is .015. Accordingly, the Annual Commission Threshold is \$28,000 (\$420/.015). If the maximum B&O tax credit and/or service B&O tax rate change(s) in the future, the Annual Commission Threshold for purposes of this agreement is to be adjusted accordingly.

IV. Collection of Taxes Applicable to _____

In addition to the taxes collected and remitted by _____ on behalf of its distributors, _____ is also subject to any taxes applicable to it based on its business activities and sales that are governed by the laws of the State of Washington.

V. Terms and Conditions Applicable to Collection of All Taxes on Behalf of Distributors of _____'s Products

- A. Remittance:** _____ shall report to the Department, all sales subject to the sales, use, RTA and litter taxes, the amount of such Taxes actually collected including adjustments and shall remit such Taxes to the Department. The Department shall not require any distributors to register or collect the Taxes to the extent the Taxes are actually collected and remitted as covered by this Agreement.
- B. Bad Debts/Uncollected Tax:** Except as provided in this paragraph, _____ shall not be liable or responsible for the payment of the Taxes on sales where any distributor has, for any reason, failed to remit the Tax due, provided however, (a) that the Tax due was clearly indicated on the _____'s invoice, and (b) that _____ has complied with its duty of notice to the Department, as contained in section II. A. 3. of this agreement. The release or nonrelease of _____'s collection and remittance obligations under this agreement shall not affect any distributor's liability to pay or collect the Taxes otherwise due on any non-exempt sales of the products.
- C. Limitation on Liability:** _____ is not a guarantor of any distributor's collection or the customer's payment of their tax obligations. _____ shall be liable only to the extent it has actually collected the Taxes from the distributor and not remitted such Tax to the Department. _____ shall not be liable for any tax collection, reporting or remittance obligations on behalf of its

distributors to the Department beyond those specifically set forth in the Agreement.

- D. Release of Distributors and the Customers:** Any distributor who pays the full amount of the Taxes to _____ on the purchase of the products, as required under this Agreement including all adjustments, shall be relieved of any further tax liabilities or collection obligation in connection with the sale of the same products. The release shall extend to any customer purchasing the same products at retail from the distributor. Notwithstanding the foregoing, this Agreement shall not be interpreted to limiting the Department's ability to prosecute any distributor under any provisions of tax statute or to collect the Taxes from any distributor and customer to the extent not remitted to _____. Distributors will be notified by _____ of their liability for any taxes not remitted to the State of Washington.

VI. Terms and Conditions Applicable to the Entire Agreement

- A. Term:** This Agreement, nine (9) pages in length, shall be effective upon signing and shall remain in full effect and binding on both parties until terminated by either party. Either party may terminate this Agreement on at least sixty (60) days advance written notice.
- B. Assignment:** This Agreement shall be binding upon and shall inure to the benefit of the Department and _____ and their respective successors and assigns.
- C. Disclosure of Reporting Agreement:** _____ authorizes the Department to disclose to persons identifying themselves as current or potential _____ distributors (or their lawyers, accountants, etc.), that _____ has entered into this Tax Collection Agreement with the Department. The Department, at its discretion, may provide such persons with copies of sections II, III & V of this agreement, and/or the general ramifications of this agreement, and/or direct such persons to contact designated persons at _____'s offices.
- D. Changes in Law:** The Department shall notify, by its normal means of taxpayer notification methods, _____ of any substantive, administrative or procedural changes affecting _____'s responsibility for collecting and remitting the Taxes pursuant to this Agreement, including but not limited to rates, collection fees, product exemptions, and filing dates.

E. Notices: Any notice to a party required under this Agreement shall be in writing and shall be personally delivered or sent by certified mail to the party at the following addresses:

State of Washington
Department of Revenue
Taxpayer Account Administration
PO Box 47476
Olympia, WA 98504-7476

F. Agreement: This Agreement covers sales, use, RTA, litter, as well as Business and Occupation (B&O) tax on gross receipts.

G. Full Authority: By executing this Agreement, both _____ and the Department represent and warrant that they have full power and authority to enter into this Agreement.

H. Modifications: This Agreement contains the entire understanding of the parties and may not be modified except by a written addendum or new agreement in writing signed by both parties.

I. Plurals, Pronouns: Whenever in this Agreement words, including pronouns, are used in the masculine, they shall be read in the feminine or neuter whenever they would so apply and vice versa, and words in the Agreement that are singular shall be read as plural whenever the latter would so apply and vice versa.

J. Breach of Agreement: If _____ materially breaches any provision of this Agreement or if the facts as stated are materially different from the facts subsequently established by the Department, this Agreement is null and void and the Department may take any steps necessary to ensure compliance with the Revised Codes of Washington.

No suit, action or proceedings of any kind, type, or nature whatsoever arising out of or in any way relating to this Agreement will be commenced by _____ other than in the Superior Court of Thurston County, Washington.

This Agreement is being entered into and will be construed and interpreted in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this 9 page Agreement

Date: _____

Department of Revenue

By: _____

Title: Assistant Director

Date: _____

By: _____

Title: _____